

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ASHLEY GLYNN BRANCH,

Plaintiff

v.

CITY OF SPARKS, et al.,

Defendants

Case No.: 3:22-cv-00410-MMD-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff, who is an inmate in the Washoe County Detention Facility (WCDF), has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1).

Plaintiff brings this action against the City of Sparks and Jessica Longley of the Sparks Justice Court. He alleges that he was arrested, and was assessed bail of \$100,000 by Longley. At the preliminary hearing, the first three charges were dropped. However, Longley did not reduce the bail. He asserts a violation of the Eighth Amendment for excessive bail.

When a pretrial detainee challenges a bail determination, the Supreme Court and Ninth Circuit have held that a writ of habeas corpus is an appropriate remedy. *Stack v. Boyle*, 342 U.S. 1, 6-7 (1951); *Arevalo v. Hennessy*, 882 F.3d 763, 767 (2018). Under Nevada law, an accused in custody pending trial may challenge a bail decision by a petition for writ of habeas corpus. *Application of Knast*, 96 Nev. 597, 597, 614 P.2d 2, 3 (1980) (citing NRS 34.530); *State v. Teeter*, 65 Nev. 584, 590-91, 200 P.2d 657, 661 (1948), *overruled in part on other grounds by*

1 *Application of Wheeler*, 81 Nev. 495, 406 P.2d 713 (1965) (when a pretrial detainee alleges the
2 trial court wrongfully denied bail, “the usual procedure is ... a writ of habeas corpus.”).

3 Plaintiff’s action should be dismissed without prejudice and his IFP application denied as
4 moot so he can bring a habeas petition in connection with his underlying criminal action.

5 **RECOMMENDATION**

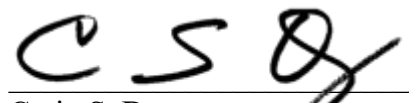
6 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DISMISSING**
7 this action **WITHOUT PREJUDICE** and **DENYING AS MOOT** the IFP application (ECF No.
8 1).

9 Plaintiff should be aware of the following:

10 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
11 this Report and Recommendation within fourteen days of being served with a copy of the Report
12 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
13 Report and Recommendation” and should be accompanied by points and authorities for
14 consideration by the district judge.

15 2. That this Report and Recommendation is not an appealable order and that any notice of
16 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
17 until entry of judgment by the district court.

18
19 Dated: September 19, 2022

20 
21 Craig S. Denney
22 United States Magistrate Judge
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